



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H & M Rempel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to alleged cause, based upon a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant raised no issue regarding service of the landlord's evidence; however the tenant did not serve the landlord his documentary evidence as required by section 4.1 of the Dispute Resolution Rules of Procedure (Rules), and I have therefore excluded such evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to alleged cause?

Background and Evidence

The undisputed evidence shows that this tenancy began on February 1, 2012, the current monthly rent obligation for the tenant is \$622, and the tenant paid a security deposit of \$300.

The landlord submitted undisputed evidence that they served the tenant with a 1 Month Notice to End Tenancy for Cause on September 20, 2013, by attaching it to the tenant's door, listing an effective end of tenancy of October 31, 2013.

The tenant confirmed receiving the Notice.

The Notice explained that the tenant had ten (10) days to file an application for dispute resolution at the Residential Tenancy Branch ("RTB") in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

Although I have no written evidence before me that the tenant filed an application to dispute the Notice, the landlord's advocate, NL, stated that she attempted to file the tenant's application for dispute resolution on his behalf through a Service BC government agent's office, and was denied that opportunity. The advocate stated that she was informed she could not file the application as she was not the tenant or did not have written authority from the tenant to act as his agent.

Thereafter, according to NL, she had the tenant sign an application to dispute the Notice, and mailed the signed application on October 3, 2013, to the Post Office Box for the Residential Tenancy Branch ("RTB") located in Victoria, via regular mail.

Both the tenant and NL testified that when the tenant received the landlord's application, Notice of Hearing letter, and application package via registered mail, they assumed this was the tenant's application being delivered from the RTB and therefore the hearing on this date was on the tenant's application.

NL further explained that she turned over the matter of his application to the tenant after she mailed it, and that when he, the tenant, notified NL of the hearing, she had no reason to believe the tenant's application had not been filed or that the hearing pertained to the landlord's application.

I must note that there are no records in the RTB database reflecting that an application from this tenant has been received and as NL stated that the application was mailed by other than registered mail, there were no records to verify when the mail was sent.

Analysis

Based on the oral and written evidence and on a balance of probabilities, the following findings are made:

I find the tenant was served a 1 Month Notice to End Tenancy for Cause, did not have sufficient evidence that he applied to dispute the Notice within ten days of service and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective November 30, 2013, at 1:00 p.m., pursuant to the landlord's agreement.

Conclusion

The landlord's application has been successful.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it is served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 20, 2013

Residential Tenancy Branch

